HIGH TECH BROADBAND COALITION

January 10, 2003

The Honorable xxxxxx
United States Senate
Committee on Commerce, Science & Transportation
Room xxxxxx
Washington, DC 20510

Dear Senator xxxxxx:

As the Committee on Commerce, Science and Transportation prepares for next week's important hearing on the state of the telecommunications industry, and as you prepare your opening statement and questions for the witnesses, we would like to advise you of the policy changes that the High Tech Broadband Coalition (HTBC) strongly believes the Federal Communications Commission needs to make in order to foster broadband competition and deployment, a key to national economic recovery and growth.

HTBC represents the leading trade associations of the computer, telecommunications equipment, semiconductor, consumer electronic, software and manufacturing sectors – a coalition of trade associations representing over 15,000 companies that participate in the non-carrier broadband "value chain." HTBC believes that the best way to achieve widespread adoption of broadband is to embrace the sustainable inter-modal competition that has developed in the broadband market – a market that is distinct from the legacy voice market. Moreover, we believe that

strengthening such inter-modal competition will result in lower prices and increased quality for cable television, high-speed Internet access, and basic telephony.

HTBC is very concerned about the impact current regulations are having on new investment in broadband facilities. For example, in part because of regulatory disincentives and continued uncertainty about the future regulatory structure, incumbent local exchange carriers (ILECs) reduced their capital expenditure (capex) budgets in both 2001 and 2002, and are doing so again in 2003. Some carriers may reduce capex budgets this year by up to 30%. Without regulatory changes, industry capital expenditures will plummet further, declines in manufacturers' research and development (R&D) spending will persist, job losses will continue to mount (already well over 500,000 in the vendor/supplier community alone), and consumers will lose out on new services. In short, we believe that regulatory reform is absolutely necessary to stimulate broadband deployment and breath new life into the industry.

As a result of the telecom collapse, communications equipment manufacturers have had to focus on reducing operating costs and in doing so have cut R&D spending. This decline raises a red flag. Our innovations have kept this country's communications infrastructure at the cutting edge and made the United States a worldwide leader in technology. The impact of reduced R&D investment may not be felt next week, but it poses a long-term serious threat to the rollout of new products and services and to our nation's ability to compete in the global marketplace.

Since its inception early in 2002, HTBC's principal focus has been on the importance of reform of the Federal Communication Commission's network unbundling rules to the future of broadband deployment and facilities-based competition in the United States. HTBC last year submitted Comments and Reply Comments in the Commission's *Notice of Proposed Rulemaking* concerning its unbundling rules (the

Triennial Review proceeding),[1] and the coalition has continued to meet with all levels of the FCC staff to further press this matter. HTBC has been urging the Commission to act with a sense of urgency to resolve the broadband issues in the *Triennial Review*. We believe that it is critical that the agency adopt a report and order at its open meeting scheduled for February 13.

The specifics of the HTBC policy recommendations are that the Commission must refrain from imposing Section 251 (of the Telecommunications Act of 1996) unbundling obligations on new, last-mile broadband facilities, including all fiber, remote terminals, and digital subscriber line (DSL) (and successor) electronics deployed on the customer side of the central office used to provide broadband services. HTBC also believes that the Commission must clarify that Sections 251 and 261 prohibit states from imposing unbundling obligations on such facilities.[2] At the same time, HTBC recommends that the Commission continue to require ILECs to provide competitive local exchange carriers ("CLECs") with collocation space and unbundled access to ILECs' legacy copper facilities.

In support of its proposal, HTBC asserted that the Section 251 impair standard set forth in Section 251(d)(2) of the Communications Act of 1934, as amended, is not met with respect to ILECs' new, last-mile broadband facilities because ILECs have no unfair advantage over CLECs in deploying new broadband facilities, and CLECs can provide broadband services to consumers over alternative broadband platforms. In addition, excluding ILECs' new, last-mile broadband facilities from Section 251 unbundling would promote broadband deployment in compliance with Section 706.[3] These conclusions

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[1] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Service Offering Advanced Telecommunications Capability, Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, 98-147, FCC 01-361 (rel. Dec. 20, 2001).

[2] 47 U.S.C. §§ 251(d)(2), 251(d)(3) & 261(c).

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

were buttressed by an economic study that Corning submitted with its comments to the Commission[4] and by an economic study performed by Drs. Haring and Rohlfs (attached as Appendix A to the HTBC comments).[5]

Recently, HTBC filed detailed proposed rule language with the Commission that would implement the above unbundling policies (see attachment). These draft rules would require an ILEC to unbundle a local loop, but would not require an ILEC to unbundle either a "broadband loop" or dark fiber deployed in the local loop. A broadband loop is defined as any fiber-based facility deployed on the customer side of the central office that is used in whole or in part to transmit packetized information and the associated equipment attached thereto. It also includes any packet-based equipment attached to a copper loop. However, the draft rules also maintain various ILEC obligations and propose other safeguards to assure that a CLEC can continue to get access to the unbundled network elements that it is able to get today.

HTBC continues to advocate public policies that promote strong facilities-based broadband competition among cable modem, DSL, fiber, satellite and wireless alternatives. Unfortunately, widespread broadband deployment by multiple platforms is not happening quickly enough under the current regulatory rules. Continuing to apply outdated rules to the capital-intensive broadband marketplace will send the industry into further depression. On the other hand, removing the shackles on the heavily regulated "telephone" side of the broadband market will promote sorely needed competition for delivering to consumers an endless array of bandwidth intensive applications, including

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[4] Cambridge Strategic Management Group, *Assessing the Impact of Regulation on Deployment of Fiber to the Home: A Comparative Business Case Analysis* (Apr. 5, 2002) ("*Corning Study*"), attached as exhibit I to Comments of Corning, Inc., Review of the Section 251 Unbundling Obligations of the Incumbent Local Exchange Carriers, CC Docket No. 01-338, (filed Apr. 5, 2002).

[5] John Haring and Jeffrey H. Rohlfs, The Disincentives for ILEC Broadband Investment Afforded by Unbundling Requirements (July16, 2002).

video, made possible by robust, high capacity networks. We hope that you will support and encourage the five FCC Commissioners to act quickly and decisively in order to achieve this result.

Sincerely,

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HTBC's First Rule Modification:

47 C.F.R. § 51.319 (a):

§51.319 Specific unbundling requirements.

(a) *Local loop and subloop*. An incumbent LEC shall provide nondiscriminatory access, in accordance with §51.311 and Section 251(c)(3) of the Act, to the local loop and subloop, including inside wiring owned by the incumbent LEC, on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service, except that the incumbent LEC shall not be required to provide unbundled access to a broadband loop as defined below and dark fiber deployed in any part of the local loop. Where an incumbent LEC upgrades an existing DLC system, the incumbent LEC shall provide unbundled access to a non-packetized voice-grade equivalent channel for basic telephone service where such technical capability already existed. Where an incumbent LEC upgrades existing plant to a broadband loop, it shall not deprive a CLEC of access to an existing copper UNE loop without first obtaining Commission approval.

(1) *Local loop*. The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC. The local loop network element includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to~~,~~ ~~dark fiber~~ attached electronics ~~(except those electronics for equipment used for the provision of advanced services), such as Digital Subscriber Line Access Multiplexers),~~ and line conditioning. The local loop includes, but is not limited to, DS1, DS3, ~~fiber,~~ and other high capacity loops. ~~The requirements in this section relating to dark fiber are not effective until May 17, 2000.~~

(2) *Broadband loop.* The broadband loop is defined as any fiber-based facility deployed on the customer side of the central office that is used in whole or in part to transmit packetized information and the associated equipment attached thereto. Also included is any electronics attached to a copper loop that is used in conjunction with or facilitates packetized transmission over such loop.

Note: With the addition of (a)(2) "Broadband loops" "Subloop" must be renumbered to 51.319(a)(3) and "Network interface device" must be renumbered to 51.319(a)(4)

….

47 C.F.R. § 51.319 (c)(5)

(c) *Switching capability* …

(5) An incumbent LEC shall not be required to provide nondiscriminatory access to unbundled packet switching capability. ~~only where each of the following conditions are satisfied.~~

~~The requirements in this section relating to packet switching are not effective until May 17, 2000.~~

~~(i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);~~

~~(ii) There are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer;~~

~~(iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access mulltiplexer in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by paragraph (b) of this section; and~~

~~(iv) The incumbent LEC has deployed packet switching capability for its own use.~~

HTBC's Second Rule Modification:

47 C.F.R. §51.319 (a)(2) [which must be renumbered to (a)(3), as indicated above]

(3) *Subloop.* The subloop network element is defined as any portion of the copper loop that is technically feasible to access at terminals in the incumbent LEC's outside plant, including inside wire. An accessible terminal is any point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole or pedestal, the Serving Area Interface ("SAI"), the network interface device, the minimum point of entry, the single point of interconnection, the main distribution frame, the remote terminal, and the feeder/distribution interface. Further, upon a site-specific request, an incumbent LEC shall provide access to the copper subloop at a splice near the remote terminal. The incumbent LEC shall be compensated for the actual cost (without regard to § 51.505) of providing this access. ~~The requirements in this section relating to subloops and inside wire are not effective until May 17, 2000.~~